

**Town of Sunset Beach  
Contract (Agreement)**

**Town of Sunset Beach 2012 Street Resurfacing Project**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **Town of Sunset Beach**, Party of the first part, hereinafter called "OWNER" and \_\_\_\_\_  
\_\_\_\_\_ doing business as (an individual), or (a partnership) or (a corporation)  
Party of the second part, hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned.

1. The CONTRACTOR will commence and complete the construction work as specified in these Contract Documents.
2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS not later than the date set by the OWNER in the NOTICE TO PROCEED and will complete the **TOWN OF SUNSET BEACH 2012 STREET RESURFACING** within **90 calendar days** unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein at the unit prices stated in the proposal.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
  - A. PROPOSAL
  - B. CONTRACT AGREEMENT
  - C. TECHNICAL SPECIFICATIONS
  - D. TOWN OF SUNSET BEACH AND NORTH CAROLINA DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS
  - E. GERNAL PROVISIONS
  - F. SUPPLEMENTAL GENERAL PROVISIONS
  - G. SPECIAL PROVISIONS
  - H. NOTICE OF AWARD
  - I. NOTICE TO PROCEED
  - J. CHANGE ORDER
6. The OWNER will pay the CONTRACTOR in the manner and as such times as set forth in the General Conditions for such amounts as required by the CONTRACT DOCUMENTS.

SECTION I: WITHNESSETH, That for and in consideration of the payments to be made the CONTRACTOR at its, their, or his own proper cost and expense and with skill and diligence, hereby agrees to do all of the work, furnish all of the materials, labor and equipment necessary to construct, complete ready for continuous use and place in operation such portion thereof as may be awarded to said CONTRACTOR, all in accordance with the attached Plans and Specifications, and such detailed directions, drawings, and so forth as may be given by the Engineer for time to time during eh construction, and in full compliance with the Agreement.

SECTION II: The OWNER agrees to pay and the CONTRACTOR agrees to receive the prices stated in the proposal attached hereto in full compensation for furnishing materials and for all labor in moving materials and executing all the work contemplated in this Contract; and the CONTRACTOR for said consideration shall be responsible for all loss or damage arising out of the nature of the work aforesaid or from any action of the elements, or from any unforeseen obstruction or difficulties which may be encountered in the prosecution of the work and the delivery of same, and for all risks of every description connection with the work, and furnishings the materials, until their final completion and acceptance; also for all expense incurred by or in consequence of the suspension or discontinuance of said work and furnishing said materials, according to the Plans, Specification, and requirements of the Engineer under them.

SECTION III: Whenever the words "BOARD" or "OWNER" is or are used, they shall be held to mean the **Town of Sunset Beach**. Whenever the word "CONTRACTOR" is used, it shall be held to mean the CONTRACTOR, or firm of CONTRACTORS, or any member of the firm contraction for any part of the work or materials herein specified, viz: The CONTRACTOR of this Agreement, his, their, or its authorized agent. Whenever the word "Engineer" is used, it shall be held to mean the Director of Public Works, Town's Consulting Engineer or his authorized representative.

SECTION IV: The work shall be commenced not later than the date set by the OWNER in the NOTICE TO PROCEED and diligently prosecuted to completion within 90 calendar days, without allowance for bad weather, traffic conditions, material delivery, etc. Should the work or delivery of materials be interrupted or delayed by the OWNER, the time of completion shall be extended by the amount of time of said delay or interruption. It is further agreed the OWNER shall have the right at its discretion to extend the time for completion of the work. The CONTRACTOR agrees to pay to the OWNER as liquidated damages the sum of \$350.00 for each consecutive calendar day the work remains incomplete between the agreed completion date and the date of actual completion.

SECTION V: The CONTRACTOR agrees not to employ an incompetent or disorderly person on the work, and shall employ competent and experienced foremen to be in charge of the work, or subdivisions thereof.

SECTION VI: The Engineer shall determine the quality and quantity of the several kinds of work and materials which are to be paid for under this Contract; and shall determine all questions in relation to lines, level, and dimensions of the work, and in respect of the interpretation of the Plans and Specifications.

SECTION VII: For projects requiring Performance and Payment Bonds, the OWNER, through the Engineer, shall have the right to make alterations, additions, modifications, or omissions in the Plans and Specifications for the work without notice to the Surety on the Performance and Payment Bonds. Such alterations, additions, modifications, or omissions shall not void or violate this Contract or discharge the Surety from its obligations. Whenever during the progress of the work, any additional work or materials or changes or modifications in the work or materials contracted for are agreed upon between the OWNER and CONTRACTOR, such additional work or materials, alterations or modifications shall be considered and treated as though originally contracted for and shall be subject to all terms and conditions and provisions of the original contract.

SECTION VIII: Whenever the CONTRACTOR is not upon any part of the work where it is desired by the Engineer to give instructions, the Superintendent or Foreman, who may be in charge of the particular part of said work, shall receive and obey said instructions from the Engineer, provided such instructions are in compliance with the Contract.

SECTION IX: The OWNER may require the CONTRACTOR to furnish additional materials, and to do additional work not provided in the Contract or in the Specifications, but which may be found necessary to the proper prosecution and completion of the work embraced in this Contract, at prices to be fixed by the prices named in the Proposal, or on Material of Force Account, with fifteen (15) percent added for overhead and profit. No other work than that included in the Contract shall be done, and no additional material shall be furnished by the CONTRACTOR without a written order from the Engineer. In the absence of such written order from the Engineer, the CONTRACTOR shall not be entitled to payment for such additional work. Bills for extra work shall be filed with the Engineer within 24 hours after such work is done, in order for the Engineer to check and establish the accuracy of the extra work bills. In making charge for extra work, no allowance shall be made for the use of small tools.

SECTION X: The OWNER, acting through the Engineer, reserves the right to place inspectors on the work or at the place of shipment, or delivery of materials, or at factory or works of the CONTRACTOR, to observe the quality and character of the work done and materials used. The CONTRACTOR agrees to afford said inspectors all proper facilities for carrying out their duties.

It is agreed and understood that right of the OWNER through its Engineer, or Inspector, or other agent to supervise the work and materials, is retained, in order to secure the completion of the work according to the Plans, Specifications, and Contract without unnecessary inconvenience to the public, but nothing contained in the Contract and Specifications shall be taken or understood to authorize such control of any of his, their, or its obligations, or as to make the CONTRACTOR an agent of the OWNER.

The Engineer may interpret but has no power to vary the terms of this Contract and any variation from the terms shall be at the CONTRACTOR'S own risk.

SECTION XI: The CONTRACTOR will indemnify and hold harmless the OWNER and Engineer, their agents, servants, and employees, from and against any and all cost, loss, expense or damage of any kind, including attorneys' fees, threatened against or suffered by said parties and arising in any matter out of this Contract or this work contemplated by this Contract, due to any act of negligence, omission or commission on his part.

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SECTION XII: The CONTRACTOR agrees to look after the execution of this Contract personally, and agrees not to assign or sublet any portion of same without the consent of the OWNER. The subletting or assignment of any part of the work by the CONTRACTOR shall not in any way relieve the CONTRACTOR of his responsibilities or obligations, and the OWNER will look to the CONTRACTOR and not to the subcontractor or assignee for the faithful performance of the work.

SECTION XIII: The CONTRACTOR shall immediately remove and reconstruct at his own expense all work or materials not in accordance with this Contract, and any failure on the part of the Engineer to disapprove of any work or material at or before a monthly estimate, or at any other time before the final completion and acceptance of the entire work or material, or any part of it, shall not relieve the CONTRACTOR from their obligations or faithful performance of the Contract, notwithstanding such work or material may have been estimated and paid for.

SECTION XIV: Partial payments will be made once a month of the percentage of the work done and materials furnished, as approximately estimated by the Engineer less retainage in accordance with N. C. G. S. 143-134.1. The Engineer may withhold such monthly estimate when said estimate, in his opinion, will amount to \$1,000.00 or less.

On the completion of the work, the CONTRACTOR shall proceed with due diligence to measure up the work and materials and present his final pay request to the Engineer for review and approval, whereupon the OWNER shall pay, or cause to be paid, such amount less payments previously made. The payment of such final amount shall release the OWNER from all claims for work done or materials furnished under this Contract.

SECTION XV: The OWNER may at any time require full release of all claims for materials or labor furnished for this work and may withhold payments of any estimate until same is produced.

SECTION XVI: The CONTRACTOR shall execute the work in such a manner as to be of least inconvenience to the OWNER and Public. He shall comply with all ordinances and regulations affecting in any manner his work, and all sanitary rules and regulations, taking precaution to avoid creating unsanitary conditions. The CONTRACTOR shall acquire all permits necessary to complete the work as described in the Plans and Specifications.

SECTION XVII: The Contractor further agrees that if the work to be done under this Contract shall be abandoned, or if the Contract shall be assigned by the CONTRACTOR otherwise than as herein provided, or if the CONTRACTOR should become insolvent or have a Receiver appointed or voluntarily go into Bankruptcy or be placed in bankruptcy, or if at any time the Engineer shall be of the opinion, and shall so certify in writing to said OWNER the work is unnecessarily or unreasonably delayed, or that said CONTRACTOR is willfully violating any terms or conditions of this Contract, or is not executing the Contract in good faith, or is not making such progress in the execution of said work as to indicate its completion within the time specified, said OWNER shall have the right to notify said CONTRACTOR to discontinue said work or such part or parts thereof as said OWNER may designate; and subject to the Surety's rights hereunder, as applicable, said OWNER shall thereupon have the power and right to employ by contract or otherwise, and in such manner and at such prices as it may determine,

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any persons, implements, tools and other means of construction which it may deem necessary to work at and be used to complete the work herein described or such part or parts of it as said OWNER may have designated; also the power to use such appliances, implements, tools and materials, and means of construction of every description as may be found upon the line of said work, both such as enter into the completed work and such as are necessarily used in and about the same and to procure other materials for the completion of the same, and for carrying out the terms of the Contract; also to charge the expense of all said superintendence, labor, materials, trucks, machinery., appliances, implements, tools and other means of construction to said CONTRACTOR; and the expense so charged shall be deducted and paid by said OWNER out of such monies to receive the difference; and in case such expenses shall exceed the sum which would have been payable under this Contract, if the same had be completed by said CONTRACTOR, then said CONTRACTOR shall pay the amount of such excess to the OWNER on notice from said OWNER of the excess so due.

It is further agreed that neither an extension of time for any reason, beyond that fixed herein for the completion of such work; nor the performance and acceptance of any part of the work; nor delivery and acceptance of any materials called for by this Contract, shall be deemed to be a waiver by said OWNER of the right to assume control of this Contract for the reason and in the manner hereinbefore provided.

SECTION XVIII: The CONTRACTOR shall be responsible for all fees or claims for any patented invention used by him, and shall defend any suit that may be brought against the OWNER and shall hold said OWNER harmless for use or infringements of any patented thing or method used in connection with work herein specified.

SECTION XIX: CONTRACTOR shall, at its own expense, strictly adhere to all pertinent safety standards, rules and OSHA regulations required or recommended by governmental or quasi-governmental authorities have jurisdiction. The CONTRACTOR hereby acknowledges that it has its own safety program for all work covered by or performed under this Contract. The CONTRACTOR agrees to conduct its own frequent and regular inspections of all work covered by or performed under this Contract at the project site to verify compliance with the CONTRACTOR'S safety program and all applicable safety standards, rules and OSHA regulations. The CONTRACTOR, OWNER and Engineer acknowledge and agree that neither the OWNER nor Engineer have control, responsibility or authority over the CONTRACTOR or the CONTRACTOR's employees or subcontractors with regard to the safety and health conditions relating to or arising out of the CONTRACTOR'S work or the performance of any work covered by this Contract. The CONTRACTOR has the sole responsibility and authority for ensuring any and all hazardous conditions relating to or arising out of the CONTRACTOR'S work is corrected. With regard to the CONTRACTOR'S work or any work covered by or performed under this Contract, the OWNER is not the controlling employer or controlling entity for the purpose of detecting hazardous conditions or ensuring that hazardous conditions are corrected.

SECTION XX: Performance and Payment Bond Surety. It is further mutually agreed between the CONTRACTOR and OWNER hereto that, if at any time after the execution of this Contract and the Performance Payment Bonds hereto attached for its faithful performance, the OWNER shall deem the Surety or Sureties upon such Bond to be unsatisfactory; or if, for any reason such Bond ceases to be adequate to cover the performance of the work, the CONTRACTOR shall, at his expense, within five (5)

days after the receipt of notice from the OWNER to do so, furnish an additional Bond or Bonds in such form and amount, and with such Surety or Sureties that shall be satisfactory to the OWNER.

In such event, no further payment to the CONTRACTOR shall be deemed to be due under the Contract until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the OWNER.

SECTION XXI: Guarantee. It is understood that the CONTRACTOR guarantees all material and workmanship for a period of one (1) year dating from the date of final acceptance of the work under the Contract.

SECTION XXII: The CONTRACTOR hereby agrees he has read each and every clause of this Contract and fully understands the meaning of same, and that he will comply with all of its terms. This Agreement is to be executed in two (2) copies, one copy to be delivered to the CONTRACTOR and one to be retained by the party of the first part.

In WITNESS WHEREOF, the said \_\_\_\_\_, the CONTRACTOR, has caused these presents to be signed in its name by its President, the Corporate Seal affixed and attested by its Secretary; and the said **Town of Sunset Beach**, OWNER, has caused this instrument to be executed in its name by the **Town Administrator**, attested by its Town Clerk and its Official Seal to be affixed as of the day and year first above written.

Dated and Signed at: \_\_\_\_\_,

This the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Name of Company: \_\_\_\_\_

Signed By: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Town of Sunset Beach: \_\_\_\_\_

Signed By: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Print Name and Title:

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